

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>RACHAEL ANNE ELROD, ANDREW KAUFMAN, SARAH MARTIN, and BROOKS BRASFIELD, on behalf of themselves and all others similarly situated,</b>	)	
	)	
	)	<b>Case Nos. 3:20-cv-00617,</b>
	)	<b>3:20-cv-00618</b>
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Judge Richardson</b>
	)	<b>Magistrate Judge Holmes</b>
<b>v.</b>	)	
	)	
<b>NOTAX4NASH, MICHELLE FOREMAN, KAREN MOORE, and JOHN DOES 1-10,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
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	)	
<b>MICHELLE FOREMAN and KAREN MOORE,</b>	)	
	)	
<b>Third-Party Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>BEST SELLERS, LLC, HEATHER SELLERS, JOE GERGLEY, and HYPERMETRICS, LLC,</b>	)	
	)	
	)	
<b>Third-Party Defendants.</b>	)	
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**THIRD-PARTY DEFENDANTS JOE GERGLEY AND HYPERMETRICS, LLC’S  
MOTION TO DISMISS THIRD-PARTY COMPLAINT**

Defendants Joe Gergley and Hypermetrics, LLC (collectively, the “Hypermetrics Parties”), by and through undersigned counsel, hereby respectfully move this Court to dismiss or strike Defendants/Third-Party Plaintiffs’ Third-Party Complaint, with prejudice, for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) and failure to state a third-party claim upon which relief can be granted pursuant to Rules 12(b)(6) and 14(a).

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Pursuant to Local Rule 7.01(a), this Motion is accompanied by a memorandum of law citing supporting authorities.

As set forth in the accompanying memorandum, the Third-Party Complaint fails to comply with the impleader requirements set out in Rule 14(a). The Third-Party Complaint also fails to establish a basis for general or specific jurisdiction over Mr. Gergley or Hypermetrics. Lastly, the Third-Party Complaint fails to state a breach of contract, negligence, fraud, or Tennessee Consumer Protection Act claim against the Hypermetrics Parties upon which the Court can grant relief. Consequently, the Hypermetrics Parties respectfully request that the Court dismiss or strike Defendants/Third-Party Plaintiffs' Third-Party Complaint for lack of personal jurisdiction, improper impleader, and failure to state a claim upon which relief can be granted. Further, because the Third-Party Complaint brings a Tennessee Consumer Protection Act claim without legal merit, the Hypermetrics Parties request that the Court award attorneys' fees to the Hypermetrics Parties under the Act.

Respectfully submitted,

/s/ D. Gil Schuette  
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**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of the foregoing has been served via CM/ECF on May 14, 2021 upon the following:

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/s/ D. Gil Schuette